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FILED
Superior Court of California
County of Los Angeles

NOV 08 2017

Sherri R. Carter, Executive Officer/Clerk
By Shamya Bolden Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE
COUNTY OF LOS ANGELES**

DAVID A. GLAZER, an individual,
Plaintiffs,

vs.

CHENEY ADRIENNE SHAPIRO; CHENEY
SHAPIRO DESIGNS 401K; CHENEY SHAPIRO
DESIGNS; CHENEY ADRIENNE SHAPIRO,
TRUSTEE OF DEFENDANT CHENEY SHAPIRO
DESIGNS 401K; RESOURCEFUL
DEVELOPMENTS, INC.; RICHARD JUDSON
WILLIAMS; SILVERWOOD PROPERTIES, INC.;
KENNETH HOWARD SHAPIRO; PODLEY
ASSOCIATES REALTORS; LINDA DARLINGTON
SEYFFERT; SEISMIC SAFETY, INC.; EDMUND
J. SYLVIS; KEN LAMARR COMPTON; AND
DOES 2 THROUGH 250.

Defendants.

CASE NO. BC669741

FIRST AMENDED COMPLAINT FOR:

- (1) Negligence;
- (2) Negligent Misrepresentation;
- (3) Fraud;
- (4) Negligence;
- (5) Failure To Disclose Under Civil Code §1102;
- (6) Breach of Contract;
- (7) Breach of the Implied Covenant of Good Faith and Fair Dealing;
- (8) Negligence;
- (9) Breach of Fiduciary Duty;
- (10) Negligence;
- (11) Negligence/Negligence Per Se
- (12) Breach of Contract;
- (13) Negligence;
- (14) Negligence Per Se;
- (15) Breach of Implied Warranty

Plaintiff DAVID A. GLAZER hereby alleges as follows:

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GENERAL ALLEGATIONS

1. Plaintiff, DAVID A. GLAZER ("Plaintiff") is an individual living in Los Angeles County, California.

2. Plaintiff is informed and believes and thereon alleges that defendants Cheney Adrienne Shapiro ("Cheney A. Shapiro"), individually, and Cheney Adrienne Shapiro as trustee of defendant Cheney Shapiro Designs 401K (previously substituted for Doe 1 and incorporated herein), is an individual living in the County of Los Angeles, State of California, engaged in and doing business in Los Angeles County, California, including but not limited to residential real estate interior and exterior design, construction, retrofitting, and/or remodeling, as well as buying, rehabilitating, redesigning, and/or retrofitting, and selling ("flipping") residential real estate in Los Angeles County and elsewhere. Plaintiff is informed and believes and thereon alleges that defendant Cheney Adrienne Shapiro was at all times relevant the Trustee of defendant Cheney Shapiro Designs 401K.

3. Plaintiff is informed and believes and thereon alleges that defendant Cheney Shapiro Designs 401K is an entity, form unknown, or an alter ego or dba of defendant Cheney A. Shapiro, engaged in and doing business in Los Angeles County, California, including but not limited to residential real estate interior and exterior design, construction, retrofitting, and/or remodeling, as well as buying, rehabilitating, redesigning, and/or retrofitting, and selling ("flipping") residential real estate in Los Angeles County and elsewhere.

4. Plaintiff is informed and believes and thereon alleges that defendant Cheney Shapiro Designs is an entity, form unknown, or an alter ego or dba of defendant Cheney A. Shapiro, engaged in and doing business in Los Angeles County, California, including but not limited to residential real estate interior and exterior design, construction, retrofitting, and/or remodeling, as well as buying, rehabilitating, redesigning, and/or retrofitting, and selling ("flipping") residential real estate in Los Angeles County and elsewhere.

5. Plaintiff is informed and believes and thereon alleges that defendants Does 2 through 25 are individuals or business entities, forms unknown, engaged in and doing business

1 in Los Angeles County, California, including but not limited to residential real estate interior
2 and exterior design, construction, retrofitting, and/or remodeling, as well as buying,
3 rehabilitating, redesigning, and/or retrofitting, and selling ("flipping") residential real estate in
4 Los Angeles County and elsewhere.

5 6. Defendants Cheney A. Shapiro, individually and as trustee of Cheney Shapiro
6 Designs 401K, Cheney Shapiro Designs 401K, and Cheney Shapiro Designs shall collectively be
7 referred to as the "Cheney Shapiro Defendants".

8 7. Plaintiff is informed and believes that defendant Resourceful Developments, Inc.,
9 is, and at all times mentioned herein was, a California corporation or other form of business
10 entity duly organized under the laws of California and engaged in and doing business in Los
11 Angeles County, California, including but not limited to residential real estate construction,
12 home improvement construction, retrofitting, and remodeling.

13 8. Plaintiff is informed and believes that defendant Richard Judson Williams is an
14 individual residing in Los Angeles County, California, engaged in residential real estate
15 construction, home improvement construction, retrofitting, remodeling, and interior and
16 exterior design in Los Angeles County. Plaintiff is informed and believes and thereon alleges
17 that and at all relevant times defendant Richard Judson Williams was the Responsible
18 Managing Officer of defendant Resourceful Developments, Inc.

19 9. Defendants Resourceful Developments, Inc. and Richard Judson Williams shall
20 collectively be referred to as the "Contractor Defendants".

21 10. Plaintiff alleges that at all times herein mentioned, defendants Silverwood
22 Properties, Inc. ("Silverwood") and Kenneth Howard Shapiro ("Kenneth H. Shapiro") were
23 individuals, real estate corporations, or other forms of business entities, duly organized and
24 existing under the laws of the state of California, and were engaged in doing business in the
25 County of Los Angeles including, but not limited to, residential real estate sales and brokerage.
26 At all times relevant defendant Kenneth H. Shapiro was a California licensed real estate broker,
27 served as the California Bureau of Real Estate Licensed Officer/Designated Officer and the real
28

1 estate broker of record for defendant Silverwood, was defendant Silverwood's Chief Executive
2 Officer, Secretary, and Chief Financial Officer and was therefore an officer, director, and/or
3 managing agent of defendant Silverwood.

4 11. Plaintiff alleges that at all relevant times defendant Kenneth H. Shapiro was a
5 licensed real estate broker and/or real estate sales agent, and served as real estate broker for
6 Silverwood.

7 12. Defendant Kenneth H. Shapiro is the father of defendant Cheney A. Shapiro.

8 13. Defendants Silverwood and Kenneth H. Shapiro shall hereinafter be collectively
9 referred to as the "Shapiro-Silverwood Defendants".

10 14. The Shapiro-Silverwood Defendants represented the Cheney Shapiro Defendants
11 as their selling agent/ broker in the sale of the Home to Plaintiff.

12 15. Plaintiff alleges that at all times defendant Podley Associates Realtors ("Podley"),
13 Linda Darlington Seyffert ("Seyffert") were individuals, real estate corporations or other
14 corporations or other forms of business entities, duly organized and existing under the laws of
15 the state of California, and were engaged in doing business in the Los Angeles County,
16 California including, but not limited to, residential real estate sales and brokerage.

17 16. Defendants Seyffert and Podley shall hereinafter be collectively referred to as
18 the "Seyffert-Podley Defendants".

19 17. The Seyffert-Podley Defendants represented Plaintiff as his real estate agent and
20 broker in the Cheney Shapiro Defendants' sale of the Home to Plaintiff.

21 18. Plaintiff is informed and believes and thereon alleges that at all times herein
22 relevant defendants Seismic Safety, Inc., Edmund John Sylvis, and Ken Lamarr Compton, at all
23 relevant times were individuals and/or business entities of various forms, duly organized and
24 existing under the laws of California, duly licensed contractors pursuant to the California
25 Contractors State License Board, and were engaged in doing business in Los Angeles County ,
26 including but not limited to residential real estate inspections, construction, improvement
27 construction, retrofitting, and remodeling.

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1 19. Plaintiff is informed and believes and thereon alleges that at all relevant times,
2 defendant Edmund John Sylvis was the Responsible Managing Officer of defendant Seismic
3 Safety, Inc.

4 20. Defendants Seismic Safety, Inc.; Edmund J. Sylvis; and Ken Lamarr Compton shall
5 collectively be referred to as the "Home Inspection Defendants".

6 21. Plaintiff is informed and believes and thereon alleges that defendants Does 2
7 through 250, are individuals or businesses, forms unknown, engaged in and doing business in
8 Los Angeles County, California, including but not limited to residential real estate interior and
9 exterior design, construction, retrofitting, and/or remodeling, as well as buying, rehabilitating,
10 redesigning, and/or retrofitting, and selling ("flipping") residential real estate in Los Angeles
11 County and elsewhere; residential real estate construction, home improvement construction,
12 retrofitting, and remodeling; Responsible Managing Officers or Responsible Managing
13 Employees; residential real estate sales and brokerage; residential real estate inspections,
14 construction, improvement construction, retrofitting, and remodeling .

15 22. Plaintiff alleges that at all times herein mentioned defendants Does 201 through
16 250, were individuals and/or business entities, duly organized and existing under the laws of
17 California and were engaged in business in Los Angeles County, California, including but not
18 limited to professional services, including but not limited to civil engineering, structural
19 engineering, geotechnical engineering, architecture, geology. Defendants Does 201 through
20 250 shall hereinafter be collectively referred to as the "Engineering Defendants".

21 23. The true names and identities of Defendants Does 2 through 250, inclusive, are
22 unknown to Plaintiff. Plaintiff will amend this Complaint to allege the true names and
23 capacities of such fictitiously-named defendants, whether individual, corporate or otherwise,
24 when ascertained. Plaintiff alleges on information and belief that each of the fictitiously-
25 named defendants in responsible in some manner for the occurrences herein alleged, that
26 Plaintiff's damages were proximately caused thereby, and that each of said fictitiously-named

1 defendants was an agent of the other, acting within the course and scope of the agency, and
2 that every act of each Defendant was ratified by the others.

3 24. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
4 defendant Cheney Adrienne Shapiro owned and/or controlled defendants Cheney Shapiro
5 Designs 401k, Cheney Shapiro Designs, Resourceful Developments, Inc., and does 2 through
6 10.

7 25. Plaintiff is informed and believes, and thereon alleges that the Cheney Shapiro
8 Defendants, the Contractor Defendants, and defendants Does 2 through 50, at all times
9 relevant were:

- 10 a. Alter egos;
- 11 b. Part of the same enterprise;
- 12 c. Parent-subsiary;
- 13 d. Owned, operated, and/or controlled by each other and/or one or more of
14 the other defendants;
- 15 e. Acting as the agent, conduit and/or employee of the other defendants, at all
16 times acting within the course and scope of the agency and employment;
- 17 f. Comprised of and controlled by common officers, directors, shareholders,
18 employees and/or agents;
- 19 g. Partners;
- 20 h. DBA's ("doing business as") of other defendants; and
- 21 i. Acting with the knowledge, consent, and authorization of the other
22 defendants.

23 26. Plaintiff is informed and believes and thereon alleges that at all relevant times
24 there was a unity of interest between and among the Cheney Shapiro Defendants the
25 Contractor Defendants, and defendants Does 2 through 50. Plaintiff is further informed and
26 believes and thereon alleges that each of the foregoing defendants utilized the same
27 employees, offices and equipment, owned, operated, controlled, and/or funded each other;

1 comingled assets. As a consequence of foregoing, if each of the foregoing defendants is not
2 held liable for the debts and obligations of the other defendants, fraud and injustice would
3 result.

4 27. Plaintiff is informed and believes and thereon alleges that defendant Kenneth H.
5 Shapiro is the father of defendant Cheney A. Shapiro; that Kenneth H. Shapiro acted as the real
6 estate agent for the Cheney Shapiro Defendants' sale of the home to Plaintiff; that defendant
7 Kenneth H. Shapiro observed the condition of the Home prior to the Construction and
8 Engineering Services (defined in this Complaint); that defendants Cheney A. Shapiro and
9 William Judson Williams are married; that defendants Cheney A. Shapiro and William Judson
10 Williams are officers and directors of Resourceful Developments, Inc., and together own and
11 control defendants Cheney Shapiro Designs 401k, Cheney Shapiro Designs, and Resourceful
12 Developments, Inc. Plaintiff is further informed and believes and thereon alleges that
13 defendants Cheney A. Shapiro and William Judson Williams were actively involved in,
14 supervised, and directed the Construction and Engineering Services (defined in this Complaint).

15 28. Because of the relationships among the Cheney Shapiro Defendants, the
16 Contractor Defendants, the Shapiro-Silverwood Defendants, and Defendants Does 2 through
17 50, the knowledge of one or all of the Defendants is imputed to the other Defendants, and the
18 knowledge of one Defendant is the knowledge of all Defendants.

19 29. Plaintiff is informed and believes, and thereon alleges that defendants Seismic
20 Safety, Inc., Edmund J. Sylvis, Ken Lamarr Compton, and Does 151 through 200, at all times
21 relevant were and are:

- 22 a. Alter egos;
- 23 b. Part of the same enterprise;
- 24 c. Parent-subsiary;
- 25 d. Owned, operated, and/or controlled by each other and/or one or more of
- 26 the other defendants;

- e. Acting as the agent, conduit and/or employee of the other defendants, at all times acting within the course and scope of the agency and employment;
- f. Comprised of and controlled by common officers, directors, shareholders, employees and/or agents;
- g. Partners;
- h. DBA's ("doing business as") of other defendants; and
- i. Acting with the knowledge, consent, and authorization of the other defendants.

30. Plaintiff is informed and believes, and thereon alleges, that at all times relevant there was, and there is a unity of interest between and among defendants Seismic Safety, Inc.; Edmund J. Sylvis; and Ken L. Compton. Plaintiff is further informed and believes and thereon alleges that each of the foregoing defendants utilized the same employees, offices and equipment, owned, operated, controlled, and/or funded each other; comingled assets. As a consequence of foregoing, if each of the foregoing defendants is not held liable for the debts and obligations of the other defendants, fraud and injustice would result.

31. Because of the relationships among defendants Seismic Safety, Inc.; Edmund J. Sylvis; Ken L. Compton, the knowledge of one or all of the Defendants is imputed to the other Defendants, and the knowledge of one Defendant is the knowledge of all Defendants.

32. Plaintiff purchased the property located at 6257 Pine Crest Drive, Los Angeles, California 90042 (the "Home") from the Cheney Shapiro Defendants.

33. Plaintiff and the Cheney Shapiro Defendants entered into a standard residential purchase and sale contract (the "Purchase Contract"), a copy of which is attached hereto as Exhibit "1".

34. As required by the Purchase Contract and Civil Code §1102, et seq., the Cheney Shapiro Defendants completed and signed the Seller's Real Estate Transfer Disclosure Statement.

1 35. As required by Purchase Contract, the Cheney Shapiro Defendants completed
2 and signed the Seller's Property Questionnaire ("SPQ").

3 36. At the time the Cheney Shapiro Defendants purchased the Home, the Home was
4 in poor condition, with extensive damage throughout the home and the property. Many
5 serious conditions existed in the Home that materially affected the value and desirability of the
6 Home. These serious adverse conditions included, but are not limited to (discovery and
7 investigation are ongoing) cracks, tears, separations and/or movement in the concrete flat
8 work, soil movement, foundation, framing, structural foundation and framing, brickwork,
9 exterior walls, exterior planters, exterior retaining walls, fireplace and chimney, interior walls
10 and ceilings, and interior floors. All of these adverse conditions that existed in the Home when
11 the Chaney Shapiro Defendants purchased the Home shall be collectively referred to as
12 "Adverse Conditions". The Adverse Conditions were warning/red flag indicators of the
13 presence of material and serious adverse conditions that materially affect the value and
14 desirability of the Home.

15 37. After buying the Home, and prior to selling the Home to Plaintiff, the Cheney
16 Shapiro Defendants, the Contractor Defendants, the Engineering Defendants, and Doe
17 Defendants 2-250 redesigned, rehabilitated, renovated, and repaired the problems, and
18 performed other construction and engineering activities. These activities covered up and/or
19 appeared to remedy the red flags – the Adverse Conditions. These activities had the further
20 effect of making the Home appear to be devoid of prior problems. Among other things,
21 Defendants retro-fitted, added, and repaired geotechnical, structural and seismic systems,
22 including but not limited to the retaining walls, foundation, framing, walls, ceilings, concrete.
23 Further, Defendants made extensive repairs, modifications, and additions to significant portions
24 of the Home, including but not limited to the Adverse Conditions - retaining walls, planter
25 boxes, other exterior walls, concrete flatwork, exterior brick work, the foundation systems,
26 seismic elements, interior walls, interior ceilings, interior floors, and roofs. Defendants also
27 built an addition to the home – a new bedroom on the top floor attic. All of the work
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1 performed by the Defendants is collectively referred to as "Construction and Engineering
2 Services". The effect of the Construction and Engineering Services was to conceal the Adverse
3 Conditions, and deceptively make the Home appear to be problem free and devoid of prior
4 problems. The Construction and Engineering Services were a cosmetic cover up of the
5 problems, including the Adverse Conditions and other conditions. At the time they performed
6 the Construction and Engineering Services, Defendants knew that the Construction and
7 Engineering Services were deficient and defective and inadequate. The Construction and
8 Engineering Services performed by Defendants are collectively referred to as the "Defects".
9 Defendants knew, and/or should have known, at the time they performed the Construction and
10 Engineering Services, when the Defendants put the Home up for sale, when Defendants
11 performed their inspection and their disclosures, and when they sold the Home to Plaintiff, that
12 the Home suffered from Adverse Conditions, Defects, and other deficient and defective
13 conditions that materially affected the value and desirability of the Home.

14 38. In performing the Construction and Engineering Services, the Defendants
15 covered up and concealed the Adverse Conditions and the Defects and other material
16 conditions.

17 39. Plaintiff is informed and believes and thereon alleges that Defendants performed
18 the Construction and Engineering Services in a manner that was deficient, defective, in violation
19 of applicable building codes and local ordinances and requirements, beyond the scope of
20 permits, and/or not permitted (the Construction and Engineering Services are also collectively
21 referred to as the "Defects").

22 40. The Defects and the Adverse Conditions and other conditions materially affected
23 the value and desirability of the Home.

24 41. Plaintiff is informed and believes, and on that basis alleges, that the Cheney
25 Shapiro Defendants, the Shapiro-Silverwood Defendants, and the Contractor Defendants knew
26 or should have known about the Adverse Conditions and the Defects and other material
27 conditions at the time they sold the home to Plaintiff.

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42. When the Chaney Shapiro Defendants sold the Home to Plaintiff, they did not disclose the Adverse Conditions and the Defects and other conditions.

43. The Shapiro-Silverwood Defendants, acting as the selling agent for the Chaney Shapiro Defendants when the home was sold to Plaintiff, did not disclose the Adverse Conditions and the Defects and other conditions.

44. The Cheney Shapiro Defendants and the Shapiro-Silverwood Defendants misled Plaintiff by failing to disclose the Defects and the Adverse Conditions and other conditions.

45. The presence in the Home of the Defects and the Adverse Conditions and other conditions are material facts affecting the value and desirability of the Home.

46. Plaintiff would not have purchased the Home had he known of the Defects and the Adverse Conditions and other conditions.

47. Plaintiff took possession of the Home after the escrow closed in 2014. Within the last year, Plaintiff discovered the Defects and the Adverse Conditions.

48. Plaintiff has attempted to mediate this dispute with the Defendants.

FIRST CAUSE OF ACTION

(Damages for Negligence – Failure to Disclose Against the Cheney Shapiro Defendants and the Shapiro-Silverwood Defendants and Does 2 through 250)

49. Plaintiff hereby repeats and realleges each and every prior allegation with the same force and effect as if fully set forth herein.

50. Defendants, by reason of their relationships and activities alleged in this Complaint, knew or should have known of the presence of facts and conditions that materially affect the value or desirability of the Home, including but not limited to the Adverse Conditions and Defects at the Home, and other facts and conditions that materially affect the value or desirability of the Home.

51. Defendants owed Plaintiff a duty to comply with disclosure laws, be truthful, and disclose all facts and conditions that materially affect the value or desirability of the Home, including but not limited to the Adverse Conditions and Defects at the Home, and any other

1 facts and/or conditions that materially affect the value or desirability of the Home, the
2 existence of which the Defendants knew or should have known before the Home was sold to
3 Plaintiff.

4 52. Plaintiff is informed and believes, and on that basis alleges, that before or at the
5 time the Home was sold to Plaintiff, the Defendants knew or should have known of the
6 existence of facts and/or conditions that materially affect the value or desirability of the Home,
7 including but not limited to the Adverse Conditions and Defects at the Home, but failed to tell
8 the truth about, and disclose to Plaintiff the facts and/or conditions that materially affect the
9 value or desirability of the Home, including but not limited to the Adverse Conditions and
10 Defects.

11 53. The existence of facts and/or conditions, the Adverse Conditions, and the
12 Defects at the Home are facts that materially affect the value and/or desirability of the Home.

13 54. Had the existence of facts and/or conditions, the Adverse Conditions, and the
14 Defects been disclosed to Plaintiff prior to the sale, Plaintiff would not have purchased the
15 Home.

16 55. As a direct and proximate result of the facts and/or conditions, the Defects and
17 the Adverse Conditions and the Defendants' conduct, Plaintiff has been damaged in an amount
18 which will exceed the jurisdictional limit of this Court, which amount will be proven at trial.
19 These damages include, and are not limited to, the following, as well as others which will be
20 determined at the time of trial:

- 21 a. Property damage, including damages to various areas, portions, systems,
22 and/or components of the Home, wall coverings, floor coverings, drywall,
23 framing and roof components, fireplace, personal property, etc., which were
24 and are the legal/proximate consequence and/or result of the Adverse
25 Conditions and Defects;

- b. Costs to hire experts, consultants, engineers, architects, and contractors to investigate, formulate repairs, redesign, fix, and reconstruct the Adverse Conditions and the Defects and other conditions;
- c. Costs to correct and repair the Adverse Conditions and Defects and other conditions, including tear out costs, demolition costs, reconstruction costs, and reinstallation costs, such that the Home conforms to applicable building codes, statutes, local ordinances.
- d. Relocation and loss of use costs, additional living expenses, moving and storage costs, and related costs when repairs are effectuated;
- e. Diminution in value of the Home which is the legal/proximate result of the Adverse Conditions and Defects and other conditions;
- f. Additional damages of which Plaintiff is presently unaware, but which will be proven at the time of trial.
- g. At present, damages are estimated to be no less than \$500,000.

SECOND CAUSE OF ACTION

(Damages for Negligent Misrepresentation Against the Cheney Shapiro Defendants and the Shapiro-Silverwood Defendants and Does 2 through 250)

56. Plaintiff hereby repeats and realleges each and every allegation of Paragraphs 1 through 35, inclusive, set forth above, with the same force and effect as if fully set forth herein.

57. The Cheney Shapiro Defendants, defendant Kenneth Howard Shaipro, defendant Silverwood, and the Shapiro-Silverwood Defendants shall collectively be referred to as the "Selling Defendants".

58. As more fully set forth below and in paragraphs incorporated herein and included within this cause of action, the Selling Defendants acted intentionally relative to their acts of fraud and deceit and knew their statements, actions (and conversely concealments), and

1 performance, to be false at the time they were made and that same would damage and/or
2 injure Plaintiff. The factual bases include but are not limited to the following:

3 59. The Selling Defendants are in the business of buying homes, dressing up the
4 homes by covering up existing problems, and promptly re-selling the homes to the public for a
5 profit. The business enterprise is known as "flipping homes".

6 60. The Selling Defendants never lived in the Home.

7 61. The Selling Defendants bought the Home with the intent to dress it up,

8 62. The Selling Defendants, acting in a joint venture, in concert, and aiding and
9 abetting each other:

- 10 a. Worked together as a joint venture to engage in the acts alleged in this
- 11 complaint.
- 12 b. Knew that the Home suffered from the Adverse Conditions when the Cheney
- 13 Shapiro Defendants purchased the Home in 2013.
- 14 c. Knew that the purpose of buying the Home was to cosmetically conceal the
- 15 Adverse Conditions and promptly sell the Home for a profit without
- 16 disclosing the material facts that the Home contained un-repaired,
- 17 concealed, Adverse Conditions.
- 18 d. Aided and abetted each other in concealing the Adverse Conditions before
- 19 selling the Home to the public.
- 20 e. Told Plaintiff the Home had been completely rehabilitated.
- 21 f. Did not rehabilitate the Home.
- 22 g. Knowingly did not repair the Adverse Conditions.
- 23 h. Intentionally and actively concealed and covered up the Adverse Conditions.
- 24 i. Intentionally and actively concealed from Plaintiff the Adverse Conditions.
- 25 j. Intentionally failed to disclose to Plaintiff that they concealed and covered up
- 26 the Adverse Conditions.

- 1 k. Intentionally failed to disclose to Plaintiff that they did not repair the Adverse
- 2 Conditions.
- 3 l. Intentionally made the false statement that the Home passed prior
- 4 inspections, knowing that this statement was not true.
- 5 m. Knew that, when the Cheney Shapiro Defendants bought the Home in 2013,
- 6 the large retaining wall (the "Failing Retaining Wall", one of the "Adverse
- 7 Conditions") at the rear of the Home was rife with material, serious,
- 8 problems.
- 9 n. Intentionally, actively, and knowingly concealed the material problems with
- 10 the Failing Retaining Wall by making un-engineered and non-permitted
- 11 repairs to the Failing Retaining Wall by placing metal straps across several of
- 12 the material cracks in the Failing Retaining Wall.
- 13 o. Intentionally, actively, and knowingly concealed the problems with the
- 14 Failing Retaining Wall by using building materials such as concrete around
- 15 the exterior of the Home to intentionally cover up the fact that the Failing
- 16 Retaining Wall and other Adverse Conditions were causing the Home,
- 17 including but not limited to the Home's exterior improvements, to move,
- 18 which movement was causing damage to the Home and the other
- 19 improvements.
- 20 p. Intentionally, actively, knowingly created the false impression that the Failing
- 21 Retaining Wall that was rife with material problems had been repaired by
- 22 placing metal straps on the Failing Retaining Wall.
- 23 q. Intentionally, actively, and knowingly failed to disclose that they did not
- 24 repair the Failing Retaining Wall.
- 25 r. Knew that the Cheney Shapiro Defendants planned to build an addition to
- 26 the Home by converting the attic to a master bedroom, and convert the
- 27 basement storage space to livable space.
- 28

- s. Actively participated in converting the attic to a master bedroom, and convert the basement storage space to livable space.
- t. Knew that knew that in converting the attic to a master bedroom, and converting the basement storage space to livable space, deviated from the plans and specifications, were deficient and defective, and thereby the Selling Defendants knowingly created the "Defects" in the Home.
- u. Knew that the Defects existed in the Home when the Home was sold to Plaintiff, but intentionally did not disclose the existence of the Defects.
- v. Intentionally, actively, and knowingly made structural modifications to the Home without permits and in violation of the building permits.
- w. Intentionally violated California Law by using the services and work product of a structural engineer without having a direct contractual relationship with the structural engineer.

63. As noted above and in the paragraphs incorporated into this cause of action, the who, how, when where, why, and to whom of the fraudulent behavior were as follows:

- a. WHO: Defendants CHENEY ADRIENNE SHAPIRO; CHENEY SHAPIRO DESIGNS 401K; CHENEY SHAPIRO DESIGNS; CHENEY ADRIENNE SHAPIRO AS TRUSTEE OF DEFENDANT CHENEY SHAPIRO DESIGNS 401K; SILVERWOOD PROPERTIES, INC.; KENNETH HOWARD SHAPIRO; RESOURCEFUL DEVELOPMENTS, INC.; RICHARD JUDSON WILLIAMS.
- b. HOW: Acquiring knowledge of the Adverse Conditions, the Defects, the Failing Retaining Wall, and Intentionally and actively concealing, covering up, deviating from plans and specifications, performing non-engineered work that required engineering, making false statements, failing to disclose the Adverse Conditions, the Defects, the Failing Retaining Wall.

- 1 c. WHEN: Starting with the moment the Defendants investigated and bought
2 the Home in 2013, and continuing throughout 2013 and 2014 until Plaintiff's
3 purchase of the Home was complete.
4 d. WHERE: At the Home.
5 e. WHY: To minimize cost, to maximize profit, in the rapid purchase and sale of
6 the Home for a quick profit.
7 f. TO WHOM: The Plaintiff.

8 64. Defendants knew that the Home suffered from the Adverse Conditions when the
9 Cheney Shapiro Defendants purchased the home in 2013.

10 65. Defendants, by reason of their relationships and activities alleged in this
11 Complaint, knew or should have known of the presence of facts and conditions that materially
12 affect the value or desirability of the Home, including but not limited to the Adverse Conditions
13 and Defects at the Home, and other facts and conditions that materially affect the value or
14 desirability of the Home.

15 66. Accordingly, Defendants had a duty to be truthful and honest, and to disclose all
16 facts and conditions that materially affect the value or desirability of the Home, including but
17 not limited to the Adverse Conditions and Defects at the Home, and any other conditions that
18 materially affect the value or desirability of the Home.

19 67. Defendants either knew or should have known that the Plaintiff would rely upon
20 Defendants' representations, including, but not limited to, the omissions in the Sellers' Real
21 Estate Transfer Disclosure Statement, the Seller's Property Questionnaire ("SPQ"), and the
22 Agent Visual Inspection Disclosure Form, regarding the existence of facts and conditions, the
23 Defects, and the Adverse Conditions that materially affect the value and/or desirability of the
24 Home.

25 68. As a direct and proximate result of the Defendants' conduct, Plaintiff has been
26 damaged in an amount which will exceed the jurisdictional limit of this Court, which amount
27
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1 will be proven at trial. These damages include all damages alleged in this Complaint and
2 incorporated herein. At present, damages are estimated to be no less than \$500,000.

3 69. Defendants' conduct was carried on with malice, oppression and fraud. As to
4 the conduct alleged herein to have been engaged in by representatives of Defendants, and
5 each of them, the officers, directors and managing agents authorized and ratified each and
6 every act on which Plaintiff's allegations of punitive damages herein are based. On that basis,
7 pursuant to Civil Code §3294, plaintiff is entitled to an award of exemplary and punitive
8 damages in an amount adequate to make an example of, and to punish and deter, the
9 Defendants against which this cause of action is asserted, and each of them.

10 70. In failing to disclose, actively concealing and making misrepresentations to
11 Plaintiff, the Defendants acted fraudulently, willfully and oppressive, with knowledge that
12 Plaintiff would rely upon the Defendants' misrepresentations. As a consequence thereof,
13 Plaintiff is entitled to punitive damages in an amount to be proved at trial – which will be
14 sufficient to punish the Defendants.

15
16 **THIRD CAUSE OF ACTION**

17 (Damages for Fraud Against the Cheney Shapiro Defendants and the Shapiro-Silverwood
18 Defendants and Does 2 through 250)

19 71. Plaintiff hereby repeats and realleges each and every prior allegation with the
20 same force and effect as if fully set forth herein, including but not limited to Paragraphs 57
21 through 70.

22 72. Plaintiff is informed and believes, and based thereon alleges, that, by virtue of
23 the acts and relationships alleged in this Complaint, the Cheney Shapiro Defendants and the
24 Shapiro-Silverwood Defendants knew or should have known of the presence of the Adverse
25 Conditions and Defects at the Home, and any other facts and conditions that materially affect
26 the value or desirability of the Home.

1 73. Accordingly, Defendants had a duty to be truthful and honest and to disclose all
2 facts and conditions that materially affect the value or desirability of the Home, including but
3 not limited to the Adverse Conditions and Defects at the Home, and any other conditions that
4 materially affect the value or desirability of the Home.

5 74. The presence of the facts and conditions, the Adverse Conditions, and the
6 Defects, among other matters, materially affect the value and desirability of the Home.

7 75. Plaintiff is informed and believes, and on that basis alleges, that the Cheney
8 Shapiro Defendants and the Shapiro-Silverwood Defendants failed to disclose the Adverse
9 Conditions and Defects in the Home although they were known, required to be disclosed and
10 would affect the value and desirability of the Home. Further the Cheney Shapiro Defendants
11 and the Shapiro-Silverwood Defendants actively concealed from Plaintiff the Adverse
12 Conditions and Defects.

13 76. Plaintiff is further informed and believes and on that basis alleges that, when the
14 Cheney Shapiro Defendants and the Shapiro-Silverwood Defendants failed to disclose, the
15 actively concealed and made misrepresentations to the Plaintiff as alleged above, they knew
16 the true facts and did so with the intention to deceive and defraud Plaintiff and to induce
17 Plaintiff to act in reliance on the non-disclosure, concealment and misrepresentations and
18 purchase the Home.

19 77. Plaintiff was ignorant of the true facts. In reliance on the Cheney Shapiro
20 Defendants and the Shapiro-Silverwood Defendants non-disclosures, concealments and
21 misrepresentations before the time of sale of the Home, Plaintiff was induced to, and did,
22 purchase the Home.

23 78. The true facts are that the Home suffers from Adverse Conditions, Defects, and
24 other conditions that materially affect the value and desirability of the Home.

25 79. Had the true condition of the Home been disclosed to Plaintiff before the sale,
26 Plaintiff would not have purchased the Home.

80. As a direct and proximate result of the Defendants' conduct, Plaintiff has been damaged in an amount which will exceed the jurisdictional limit of this Court, which amount will be proven at trial. These damages include all damages alleged in this Complaint and incorporated herein. At present, damages are estimated to be no less than \$500,000.

81. In failing to disclose, actively concealing and making misrepresentations to Plaintiff, the Defendants acted fraudulently, willfully and oppressive, with knowledge that Plaintiff would rely upon the Defendants' misrepresentations. As a consequence thereof, Plaintiff is entitled to punitive damages in an amount to be proved at trial – which will be sufficient to punish the Defendants.

FOURTH CAUSE OF ACTION

(Damages for Negligence Against the Cheney Shapiro Defendants and the Contractor Defendants and Does 2 through 250)

82. Plaintiff hereby repeats and realleges each and every prior allegation with the same force and effect as if fully set forth herein.

83. The Defendants owed Plaintiff a duty not to ignore, not to cover up, and not to give a false impression of the nature of facts and conditions that materially affect the value and desirability of the Home, including but not limited to the Adverse Conditions and Defects. The Defendants owed Plaintiff a duty to properly retrofit, rehabilitate, and repair the Home.

84. Plaintiff is informed and believes and on that basis alleges that, before or at the time Defendants sold the Home to Plaintiff, Defendants covered up, concealed, and negligently rehabilitated, repaired and/or retro-fitted the facts and conditions, the Adverse Conditions and the Defects.

85. The facts and conditions, including but not limited to the Adverse Conditions and Defects are facts that materially affect the value and desirability of the Home.

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86. Had the existence of the facts and conditions, including but not limited to the Adverse Conditions and Defects been disclosed to Plaintiff prior to the sale, Plaintiff would not have purchased the Home.

87. As a direct and proximate result of the Defendants' conduct, Plaintiff has been damaged in an amount which will exceed the jurisdictional limit of this Court, which amount will be proven at trial. These damages include all damages alleged in this Complaint and incorporated herein. At present, damages are estimated to be no less than \$500,000.

FIFTH CAUSE OF ACTION

(Damages for Failure to Disclose Pursuant to Civil Code § 1102, et seq. Against the Cheney Shapiro Defendants and Does 2 through 250)

88. Plaintiff hereby repeats and realleges each and every prior allegation with the same force and effect as if fully set forth herein.

89. Civil Code §§ 1102, et seq., requires the transferor of any residential real property to deliver a written Real Estate Transfer Disclosure Statement as specified in Civil Code § 1102.6.

90. The Cheney Shapiro Defendants signed the Real Estate Transfer Disclosure Statement and did not disclose the Defects and the Adverse Conditions in the Home.

91. The facts and circumstances, including but not limited to the Adverse Conditions and the Defects, are of such a nature that they require disclosure – they materially affect the value and desirability of the home.

92. Plaintiff is informed and believes and on that basis alleges that the Defendants knew of the facts and circumstances, including but not limited to the Adverse Conditions and the Defects at the Home and had a duty to disclose the facts and circumstances, including but not limited to the Defects and the Adverse Conditions, which were unknown to Plaintiff.

93. As a direct and proximate result of the Defendants' conduct, Plaintiff has been damaged in an amount which will exceed the jurisdictional limit of this Court, which amount

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1 will be proven at trial. These damages include all damages alleged in this Complaint and
2 incorporated herein. At present, damages are estimated to be no less than \$500,000.
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4 **SIXTH CAUSE OF ACTION**

5 (For Damages for Breach of Contract Against the Cheney Shapiro Defendants and Does 2
6 through 250)

7 94. Plaintiff hereby repeats and realleges each and every prior allegation with the
8 same force and effect as if fully set forth herein.

9 95. The Purchase Contract, Section 6, required the Cheney Shapiro Defendants to
10 provide disclosures, including a Real Estate Transfer Disclosure Statement ("TDS"), and a C.A.R.
11 Form SPQ, both of which required the Cheney Shapiro Defendants to disclose Adverse
12 Conditions and Defects at the Home.

13 96. The Cheney Shapiro Defendants signed the Purchase Contract, the Real Estate
14 Transfer Disclosure Statement, and the C.A.R. Form SPQ, but they did not disclose the Adverse
15 Conditions and the Defects at the Home.

16 97. The Adverse Conditions and the Defects are matters that require disclosure on
17 the Real Estate Transfer Disclosure Statement and the C.A.R. Form SPQ. Additionally, the
18 Adverse Conditions and the Defects are facts that materially affect the value and desirability of
19 the Home and which the Contract required the Cheney Shapiro Defendants to disclose to
20 Plaintiff.

21 98. Plaintiff is informed and believes, and based thereon alleges, that, by virtue of
22 their conduct as alleged in this Complaint, the Defendants knew or should have known of the
23 facts and circumstances, including but not limited to the Adverse Conditions and the Defects
24 existing at the Home.

25 99. Defendants' failure to disclose the material facts and circumstances, including
26 but not limited to the Adverse Conditions and the Defects, amounts to a material breach of the
27 terms and conditions of the Purchase Contract.
28

1 100. Plaintiff has performed all of the obligations required to be performed by the
2 Plaintiff under the Purchase Contract.

3 101. As a direct and proximate result of the Defendants' conduct, Plaintiff has been
4 damaged in an amount which will exceed the jurisdictional limit of this Court, which amount
5 will be proven at trial. These damages include all damages alleged in this Complaint and
6 incorporated herein. At present, damages are estimated to be no less than \$500,000.
7

8 **SEVENTH CAUSE OF ACTION**

9 (For Damages for Breach of the Implied Covenant of Good Faith and Fair Dealing Against the
10 Chaney Shapiro Defendants and Does 2 through 250)

11 102. Plaintiff hereby repeats and realleges each and every prior allegation with the
12 same force and effect as if fully set forth herein.

13 103. There is implied in every contract in California a covenant of good faith and fair
14 dealing which requires that neither party do anything which will injure the right of the other
15 party to receive the benefit of the contract.

16 104. Defendants have breached the covenant of good faith and fair dealing as implied
17 in the Purchase Agreement, by (1) failing to disclose the Defects and the Adverse Conditions;
18 and (2) failing to provide Plaintiff with copies of reports of all inspections that took place prior
19 to Defendants' sale of the home to Plaintiff.

20 105. As a direct and proximate result of the Defendants' conduct, Plaintiff has been
21 damaged in an amount which will exceed the jurisdictional limit of this Court, which amount
22 will be proven at trial. These damages include all damages alleged in this Complaint and
23 incorporated herein, including all costs and expenses relative to the repair of the Home and
24 relative to the assessment and remediation of the Defects, plus attorney's fees, costs and
25 interest. At present, damages are estimated to be no less than \$500,000.

26 ///

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EIGHTH CAUSE OF ACTION

(Negligence Against the Shapiro-Silverwood Defendants and Does 2 through 250)

106. Plaintiff hereby repeats and realleges each and every prior allegation with the same force and effect as if fully set forth herein.

107. Defendants owed Plaintiff a duty to be honest and truthful, and to conduct and competent and diligent visual inspection of the property and to disclose all facts that materially affect the value and desirability of the property and to provide a written disclosure statement to Plaintiff.

108. Plaintiff is informed and believes, and on that basis allege, that the Shapiro-Silverwood Defendants breached their aforementioned duties in the sale of the Home to Plaintiff. The Shapiro-Silverwood Defendants failed to be honest and truthful; failed to conduct a competent and diligent inspection of the Home; failed to disclose to Plaintiff the condition of the Home prior to the Construction and Engineering Services; failed to disclose that the Adverse Conditions were covered up and concealed by the Construction and Engineering Services; failed to disclose that the Construction and Engineering Services did not comply with the building permits. Discovery and investigation are continuing. Plaintiff is informed and believes and thereon alleges that the alleged facts were known to the Shapiro-Silverwood Defendants because defendant Kenneth Howard Shapiro is the father of defendant Cheney A. Shapiro and was involved in the Cheney Shapiro Defendants' acquisition of the Home, the Construction and Engineering Services, and the sale of the Home to Plaintiff. The Adverse Conditions and the Defects are facts that materially affect the value and desirability of the Home.

109. The Adverse Conditions and the Defects at the Home are facts that materially affect the value of the Home.

110. Had the Shapiro-Silverwood Defendants complied with their obligations prior to the sale, Plaintiff would not have purchased the Home.

111. As a direct and proximate result of the Defendants' violation of their duties and the law, Plaintiff has sustained damages as that will exceed the jurisdictional minimum, in an

1 amount to be proven at trial. These damages include all damages alleged in this Complaint, and
2 further include but are not limited to all costs and expenses relative to the Home and relative to
3 the investigation, evaluation, assessment, remediation, removal and repair of the Defects and
4 the Adverse Conditions, plus costs and interest. At present, damages are estimated to be no
5 less than \$500,000.

6
7 **NINTH CAUSE OF ACTION**

8 (Breach of Fiduciary Duty Against the Podley Defendants and Does 2 through 250)

9 112. Plaintiff hereby repeats and realleges each and every prior allegation with the
10 same force and effect as if fully set forth herein.

11 113. The Podley Defendants at all times owed to Plaintiff a fiduciary duty because
12 they were Plaintiff's real estate agents and broker for Plaintiff's purchase of the Home, and
13 because Plaintiff reposed trust and confidence in and upon the skills, integrity and fidelity of
14 the Podley Defendants. These Defendants were obligated to provide undivided loyalty and
15 service to Plaintiff in the same fashion as a trustee must provide to a beneficiary and they were
16 required to provide Plaintiff with the utmost diligent and faithful service and act in the highest
17 good faith in the disposition of their duties.

18 114. At all times, Defendants were under a fiduciary duty to, among other matters:

- 19 a. Understand and explain to Plaintiff the nature of the Home (on a hillside);
20 arrange for appropriate inspections, investigations, and evaluations of the
21 red flags and issues involved in purchasing the Home; explain the risks buying
22 the Home.
23 b. Arrange for the investigation of the red flags.
24 c. Arrange for the investigation and inspection of the Home that is reasonably
25 consistent with the previous buyer's investigation of the Home.
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- d. Investigate, obtain documents, and explain to Plaintiff the facts and circumstances of a previous buyer's effort to buy the property before Plaintiff.
- e. Refer and arrange for competent and appropriate inspectors and inspections;
- f. Investigate and verify the information the Podley Defendants received from Sellers, inspectors, prior efforts to sell the Home, or to disclose to the Plaintiff that the information was not verified.
- g. Confirm from the Cheney Shapiro Defendants and the Shapiro-Silverwood Defendants the scope and nature of all work performed by or on behalf of the Defendants at the Home, including the Construction and Engineering Services.
- h. Confirm from the Defendants the condition of the Home before the Construction and Engineering Services.
- i. Confirm with the Defendants that the Construction and Engineering Services were permitted and properly engineered.
- j. Obtain the facts pertaining to a previous buyer's failed effort to complete the purchase of the Home.
- k. Obtain the nature of, and copies of, all inspection reports performed by or on behalf of any party during a prior buyer's unsuccessful purchase of the Home.
- l. Exercise ordinary and reasonable care in acting as Plaintiffs' agent and broker in the purchase of the Home.
- m. Ensure that the Cheney Shapiro Defendants and the Shapiro-Silverwood Defendants complied with all their obligations.

115. The Podley Defendants failed to perform in compliance with the above stated duties. By doing and/or omitting to do the acts and things alleged above and in this Complaint, and by failing to perform necessary acts and obtain documents and information, and by failing

1 to make truthful, accurate and complete disclosures to Plaintiff as required, the Podley
2 Defendants breached their fiduciary duties owed to Plaintiff.

3 116. The Podley Defendants' breaches and violations of their fiduciary duties and the
4 law proximately caused the damages alleged in this Complaint; the damages alleged in this
5 Complaint resulted from acts and omissions which these laws were designed to prevent.
6 Plaintiff was a member of the class of persons for whose protection said laws were adopted.

7 117. As a direct and proximate result of the violation of their fiduciary duties and the
8 law, Plaintiff has sustained damages as that will exceed the jurisdictional minimum, in an
9 amount to be proven at trial. These damages include all damages alleged in this Complaint, and
10 further include but are not limited to all costs and expenses relative to the Home and relative to
11 the investigation, evaluation, assessment, remediation, removal and repair of the Defects and
12 the Adverse Conditions, plus attorneys' fees, costs, interest and punitive damages. At present,
13 damages are estimated to be no less than \$500,000.

14 15 TENTH CAUSE OF ACTION

16 (Negligence Against the Podley Defendants and Does 2 through 250)

17 118. Plaintiff hereby repeats and realleges each and every prior allegation with the
18 same force and effect as if fully set forth herein.

19 119. Defendants owed the Plaintiff a duty to exercise ordinary and reasonable care in
20 acting as Plaintiff's agent in all aspects of the purchase of the Home. The Podley Defendants
21 owed Plaintiff a duty to advise and guide Plaintiff in the issues involved with the purchase of a
22 hillside home. The Podley Defendants owed Plaintiff a duty to disclose to Plaintiff the
23 information and knowledge in their possession or that should have been in their possession, or
24 was easily ascertainable by the Podley Defendants regarding the conditions, Adverse
25 Conditions, and Defects in the Home.

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- 1 120. At all times, Defendants owed Plaintiff a duty to, among other matters:
- 2 a. Understand and explain to Plaintiff the nature of the Home (on a hillside);
- 3 arrange for appropriate inspections, investigations, and evaluations of the
- 4 red flags and issues involved in purchasing the Home; explain the risks buying
- 5 the Home.
- 6 a. Arrange for the investigation of the red flags.
- 7 b. Arrange for the investigation and inspection of the Home that is reasonably
- 8 consistent with the previous buyer's investigation of the Home.
- 9 c. Investigate, obtain documents, and explain to Plaintiff the facts and
- 10 circumstances of a previous buyer's effort to buy the property before
- 11 Plaintiff.
- 12 d. Refer and arrange for competent and appropriate inspectors and inspections;
- 13 e. Investigate and verify the information the Podley Defendants received from
- 14 Sellers, inspectors, prior efforts to sell the Home, or to disclose to the
- 15 Plaintiff that the information was not verified.
- 16 f. Confirm from the Cheney Shapiro Defendants and the Shapiro-Silverwood
- 17 Defendants the scope and nature of all work performed by or on behalf of
- 18 the Defendants at the Home, including the Construction and Engineering
- 19 Services.
- 20 g. Confirm from the Defendants the condition of the Home before the
- 21 Construction and Engineering Services.
- 22 h. Confirm with the Defendants that the Construction and Engineering Services
- 23 were permitted and properly engineered.
- 24 i. Obtain the facts pertaining to a previous buyer's failed effort to complete the
- 25 purchase of the Home.
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- j. Obtain the nature of, and copies of, all inspection reports performed by or on behalf of any party during a prior buyer's unsuccessful purchase of the Home.
- k. Exercise ordinary and reasonable care in acting as Plaintiffs' agent and broker in the purchase of the Home.
- l. Ensure that the Cheney Shapiro Defendants and the Shapiro-Silverwood Defendants complied with all their obligations.

121. The Podley Defendants failed to exercise the degree of care that a reasonably prudent real estate agent, broker and licensee would exercise in connection with the obligations imposed by the law, and failed to perform in compliance with the above duties.

122. Had the Defendants complied with their duties prior to the sale, Plaintiff would not have purchased the Home.

123. As a direct and proximate result of the Defendants' violation of their fiduciary duties and the law, Plaintiff has sustained damages as that will exceed the jurisdictional minimum, in an amount to be proven at trial. These damages include all damages alleged in this Complaint, and further include but are not limited to all costs and expenses relative to the Home and relative to the investigation, evaluation, assessment, remediation, removal and repair of the Defects and the Adverse Conditions, plus costs and interest. At present, damages are estimated to be no less than \$500,000.

ELEVENTH CAUSE OF ACTION

(Damages for Negligence/Negligence Per Se Against
the Home Inspection Defendants and Does 2 through 250)

124. Plaintiff hereby repeats and realleges each and every prior allegation with the same force and effect as if fully set forth herein.

125. The Home Inspection Defendants were at all times herein mentioned home inspection service companies, and/or contractors, and/or engineers, and were hired by Plaintiff

1 or others to inspect the Home before the close of escrow between Plaintiff and the Chaney
2 Shapiro Defendants.

3 126. Defendants had a duty as home inspectors to use due care in their inspections
4 and reports they provided to Plaintiff. Defendants also had a duty to be qualified to inspect,
5 investigate, report, and/or render opinions on the subject of their inspection. However, these
6 Defendants failed to exercise the degree of care that a reasonably prudent inspector would
7 exercise in that they not only underestimated the extent of the Defects and the Adverse
8 Conditions, but failed to discover the Defects and Adverse Conditions altogether. Furthermore,
9 the Home Inspection Defendants were not qualified to to inspect, investigate, report, and/or
10 render opinions on the subject of their inspection.

11 127. California Bus. & Prof. Code section 7195(b) states: "A 'material defect' is a
12 condition that significantly affects the value, desirability, habitability, or safety of the dwelling.
13 Style or aesthetics shall not be considered in determining whether a system, structure, or
14 component is defective."

15 128. California Bus. & Prof. Code section 7195(a)(1) states: "'Home inspection' is a
16 noninvasive, physical examination, performed for a fee in connection with a transfer, as defined
17 in subdivision (e), of real property, of the mechanical, electrical, or plumbing systems or the
18 structural and essential components of a residential dwelling of one to four units designed to
19 identify material defects in those systems, structures and components. "Home inspection"
20 includes any consultation regarding the property that is represented to be a home inspection or
21 any confusingly similar term."

22 129. Pursuant to Bus. & Prof. Code section 7195(a)(1), the Home Inspection
23 Defendants had a duty to inspect the Home's "structural and essential components", and to
24 "identify material defects in those systems".

25 130. The Home Inspection Defendants violated the duties set forth in Bus. & Prof.
26 Code sections 7195 and 7196 as they did not observe and/or identify the Adverse Conditions
27 and Defects during their inspection of the Home.

1 131. The Home Inspection Defendants violated the duties set forth in Bus. & Prof.
2 Code sections 7195 and 7196 as they did not report the Adverse Conditions and the Defects.

3 132. As a direct and proximate result of the Defendants' violation of their duties and
4 the law, Plaintiff has sustained damages as that will exceed the jurisdictional minimum, in an
5 amount to be proven at trial. These damages include all damages alleged in this Complaint, and
6 further include but are not limited to all costs and expenses relative to the Home and relative to
7 the investigation, evaluation, assessment, remediation, removal and repair of the Defects and
8 the Adverse Conditions, plus costs and interest. At present, damages are estimated to be no
9 less than \$500,000.

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11 **TWELFTH CAUSE OF ACTION**

12 (Breach of Contract Against the Home Inspection Defendants and Does 2 through 250)

13 133. Plaintiff hereby repeats and realleges each and every prior allegation with the
14 same force and effect as if fully set forth herein.

15 134. Plaintiff and the Home Inspection Defendants entered into a written agreements
16 ("Home Inspection Contracts") for the Home Inspection Defendants to provide inspection
17 services for the Home.

18 135. Plaintiff is the Third Party Beneficiary of other home inspection services
19 performed on the home prior to the Chaney Shapiro Defendants' sale of the Home to Plaintiff.

20 136. Plaintiff is informed and believes and thereon alleges that the Home Inspection
21 Contracts required the Defendants to inspect the Home "in compliance with generally accepted
22 standards of practice" These generally accepted standards of practice include the
23 standards of California Bus. & Prof. Code sections 7195 and 7196, as well as the standards of
24 practice and code of ethics of organizations such as the California Real Estate Inspection
25 Association (CREIA), the American Society of Home Inspectors (ASHI), and other nationally
26 recognized professional home inspection associations such as The International Standards of
27 Practice For Performing A Home Inspection And The International Code of Ethics For Home
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1 Inspectors (InterNASHI). The aforementioned standards require, among other things, that a
2 Home Inspector inspect the subject home's structural components, observe and discover the
3 material defects, and report the material defects.

4 137. Defendants breached the Home Inspection Contracts; they failed to identify and
5 report the facts and conditions that materially affect the value and desirability of the home,
6 including but not limited to the Adverse Conditions and the Defects and other conditions, and
7 they failed to comply with applicable industry standards for home inspectors.

8 138. Plaintiff has performed all of the obligations required to be performed by
9 Plaintiff under the Home Inspection Contracts.

10 139. As a direct and proximate result of the Defendants' carelessness, negligence,
11 violation of their duties, and violation of the law, Plaintiff has sustained damages that will
12 exceed the jurisdictional minimum, in an amount to be proven at trial. These damages include
13 all damages alleged in this Complaint, and further include but are not limited to all costs and
14 expenses relative to the Home and relative to the investigation, evaluation, assessment,
15 remediation, removal and repair of the Defects and the Adverse Conditions, plus costs and
16 interest. At present, damages are estimated to be no less than \$500,000.

17 18 **THIRTEENTH CAUSE OF ACTION**

19 (Negligence Against the Contractor Defendants, the Cheney Shapiro Defendants, and the
20 Engineering Defendants and Does 2 through 250)

21 140. Plaintiff hereby repeats and realleges each and every prior allegation with the
22 same force and effect as if fully set forth herein.

23 141. Defendants were under a duty to exercise ordinary care or otherwise act to
24 avoid reasonably foreseeable injury to purchasers of the Home, including Plaintiff.

25 142. Plaintiff is informed and believes and thereon alleges that Defendants so
26 carelessly and negligently planned, designed, engineered constructed, modified, inspected,
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1 retrofitted, remodeled, and/or performed work and services at the Home to directly and
2 proximately cause defects and damages to the Home.

3 143. Plaintiff is informed and believes and thereon alleges that Defendants carelessly
4 and negligently performed the Construction and Engineering Services.

5 144. Plaintiff is informed and believes and thereon alleges that Defendants' conduct
6 and the transaction at issue, as alleged in this Complaint, were intended to affect the class of
7 people of whom Plaintiff is a member, namely, buyers of retrofitted, rehabilitated, and/or
8 remodeled homes, such as the Home.

9 145. Defendants knew or should have foreseen with reasonable certainty that buyers
10 of retrofitted, rehabilitated, and/or remodeled homes, including the Home, would suffer the
11 damages set forth herein if Defendants failed to perform their duty to cause the retrofit,
12 rehabilitation, and remodel of the Home to be planned, designed, engineered, constructed,
13 modified, inspected, retrofitted, remodeled, in a proper and workmanlike manner and fashion.

14 146. As a direct and proximate result of the Defendants' carelessness, negligence,
15 violation of their duties, and violation of the law, Plaintiff has sustained damages that will
16 exceed the jurisdictional minimum, in an amount to be proven at trial. These damages include
17 all damages alleged in this Complaint, and further include but are not limited to all costs and
18 expenses relative to the Home and relative to the investigation, evaluation, assessment,
19 remediation, removal and repair of the Defects and the Adverse Conditions, plus costs and
20 interest. At present, damages are estimated to be no less than \$500,000.

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22 **FOURTEENTH CAUSE OF ACTION**

23 (Negligence Per Se Against the Contractor Defendants, the Cheney Shapiro Defendants, and the
24 Engineering Defendants and Does 2 through 250)

25 147. Plaintiff hereby repeats and realleges each and every prior allegation with the
26 same force and effect as if fully set forth herein.

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1 148. Pursuant to provisions of the then-applicable building codes, statutes, local
2 ordinances and requirements, including but not limited to the California building code, local
3 building codes and ordinances, Defendants owed duties and non-delegable duties to plan,
4 design, engineer, construct, modify, inspect, retrofit, remodel, and/or perform work and
5 services in accordance with the requirements of the building codes, local ordinances, local
6 requirements, and statutes.

7 149. Plaintiffs are informed and believe and thereon allege that Defendants breached
8 their duties as they negligently planned, designed, engineered, constructed, modified,
9 inspected, retrofitted, remodeled, performed work and services, including the Construction and
10 Engineering Services, and/or failed to comply with building codes, local ordinances, local
11 requirements, and statutes at the Home.

12 150. As a direct and proximate result of the Defendants' negligence and failure to
13 comply with building codes, local ordinances, local requirements, and statutes, the Home has
14 various violations of building codes, local ordinances, local requirements, and statutes.

15 151. Plaintiff is a member of the class of persons for whose protection the building
16 codes, local ordinances, local requirements, and statutes were adopted.

17 152. By virtue of their violations of the applicable building codes, local ordinances,
18 local requirements, and statutes, Defendants breached their respective duties of care to
19 Plaintiff.

20 153. As a direct and proximate result of Defendants' conduct, Plaintiff has sustained
21 damages that will exceed the jurisdictional minimum, in an amount to be proven at trial. These
22 damages include all damages alleged in this Complaint, and further include but are not limited
23 to all costs and expenses relative to the Home and relative to the investigation, evaluation,
24 assessment, remediation, removal and repair of the Defects and the Adverse Conditions, plus
25 costs and interest. At present, damages are estimated to be no less than \$500,000.

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FIFTEENTH CAUSE OF ACTION

(Breach of Implied Warranty Against the Contractor Defendants, the Cheney Shapiro Defendants, the Engineering Defendants and Does 2 through 250)

154. Plaintiff hereby repeats and realleges each and every prior allegation with the same force and effect as if fully set forth herein.

155. Defendants impliedly warranted that the Construction and Engineering Services performed at the Home were performed in a commercially reasonable, habitable, and good and workmanlike manner, and for the use intended.

156. Plaintiff is informed and believes and thereon alleges that Defendants did not perform the Construction and Engineering Services at the Home in a commercially reasonable, habitable, and good and workmanlike manner, and did not perform the Construction and Engineering Services at the Home in a manner that was fit for their intended use.

157. As a direct and proximate result of the Defendants' conduct, Plaintiff has sustained damages that will exceed the jurisdictional minimum, in an amount to be proven at trial. These damages include all damages alleged in this Complaint, and further include but are not limited to all costs and expenses relative to the Home and relative to the investigation, evaluation, assessment, remediation, removal and repair of the Defects and the Adverse Conditions, plus costs and interest. At present, damages are estimated to be no less than \$500,000.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays for judgment as follows:

ALL CAUSES OF ACTION:

1. For damages in the amount proven at trial;
2. For the costs of suit;
3. For attorney's fees against the Chaney Shapiro Defendants as allowed by contract and by law; and

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4. For such other and further relief as the Court deems proper.

AS TO THE THIRD AND NINTH CAUSES OF ACTION

1. For damages in the amount proven at trial;

2. For the costs of suit;

3. For attorney's fees against the Chaney Shapiro Defendants as allowed by contract and by law;

4. For punitive damages as allowed by law;

5. For such other and further relief as the Court deems proper.

HARTMANN & KANANEN

DATED: November 8, 2017

By:



RONALD A. HARTMANN, ESQ.

Attorney for Plaintiff David A. Glazer

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PROOF OF SERVICE
Glazer v Shaprio, et al.
Los Angeles County Sup. Ct. Case No. BC669741

I am employed in Los Angeles County, State of California. I am over the age of eighteen years and not a party to the within action. My business address is the law firm of Hartmann & Kananen, 5743 Corsa Ave., Suite 119, Westlake Village, California 91362. My electronic notification address is constructiondefects@sbcglobal.net.

On November 8, I served the document(s) described as:

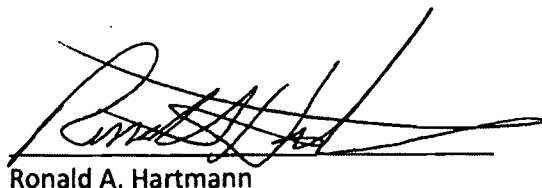
PLAINTIFF'S FIRST AMENDED COMPLAINT

[XX] on all the interested parties in this action, by placing: [] the original [XX] true copies thereof enclosed in sealed envelopes, addressed as follows, which addresses are the addresses last given by the respective addressees on any document filed in the above case and served on the Hartmann & Kananen:

SEE ATTACHED LIST

[XX] BY MAIL: On the date set forth below I deposited such envelope(s), in a mailbox regularly maintained by the U.S. Postal Service in Westlake Village, California. The envelope(s) was/were deposited with postage thereon fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Signed this 8th day of November, 2017, at Westlake Village, California.



Ronald A. Hartmann

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Service List: Glazer v Shipiro, LASC Case Number BC669741

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